

LIEBERT CASSIDY WHITMORE
A Professional Law Corporation
5701 N. West Avenue
Fresno, CA 93711

J. Scott Tiedemann, Bar No. 180456
stiedemann@lcwlegal.com

Judith S. Islas, Bar No. 117076
jislas@lcwlegal.com

Jesse J. Maddox, Bar No. 219091
jmaddox@lcwlegal.com

LIEBERT CASSIDY WHITMORE
A Professional Law Corporation
5701 N. West Avenue
Fresno, CA 93711

Telephone: (559) 256-7800
Facsimile: (559) 449-4535
E-mail: jmaddox@lcwlegal.com

Attorneys for Defendants
HAROLD CARTER, RAYMOND LOERA,
COUNTY OF IMPERIAL, AND IMPERIAL
COUNTY SHERIFF'S DEPARTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ADRIANA FERNANDEZ,

Plaintiff,

v.

JAMES RAY MORRIS, HAROLD
CARTER, RAYMOND LOERA,
COUNTY OF IMPERIAL, IMPERIAL
COUNTY SHERIFF'S DEPARTMENT,
and DOES 1-100, inclusive,

Defendants.

Case No. 08 CV 0601 JLS JMA

**DEFENDANTS HAROLD CARTER,
RAYMOND LOERA, COUNTY OF
IMPERIAL, AND IMPERIAL COUNTY
SHERIFF'S DEPARTMENT'S NOTICE OF
MOTION AND MOTION TO DISMISS
PLAINTIFF'S COMPLAINT PURSUANT
TO FRCP 12(b) AND 12(b)(6)**

**[Concurrently filed with Memorandum of
Points and Authorities; Request for Judicial
Notice; and Declarations of Robert Cortez
and Jessica Cisneros]**

NO ORAL ARGUMENT REQUIRED

Date: July 10, 2008
Time: 9:00 a.m.
Judge: Magistrate Judge Jan M. Adler
Courtroom: D

TO PLAINTIFF AND HER ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on Thursday, July 10, 2008, at 9:00 a.m., or as soon
thereafter as the matter may be heard in Courtroom D of the United States District Court, for the

1 Southern District of California, located at 880 Front Street, San Diego, California, Defendants
2 Harold Carter, Raymond Loera, County of Imperial ("County"), and the Imperial County
3 Sheriff's Department ("ICSD") (hereinafter collectively "County Defendants") will move this
4 Court for an order dismissing Plaintiff's Complaint pursuant to Rule 12(b) and 12(b)(6) of the
5 Federal Rules of Civil Procedure ("FRCP") for failure to exhaust her administrative remedies and
6 failure to state a claim upon which relief may be granted. The County Defendants base their
7 motion on the following grounds:

8 1. Plaintiff failed to failed to exhaust her administrative remedies, which is required
9 under federal and state law prior to bringing suit.

10 2. California public entities are immune from liability for injuries to prisoners
11 pursuant to California Government Code section 844.6(a)(2).

12 3. Plaintiff failed to timely submit a tort claim to the County and has never submitted
13 a tort claim naming Defendants Carter and Loera as being responsible for her injuries. Failure to
14 comply with the California Tort Claims Act precludes Plaintiff from bringing suit on her state law
15 claims.

16 4. Plaintiff failed to state a claim under the Bane Civil Rights Act (Civ. Code, §§
17 52.1 and 52.3).

18 5. Plaintiff failed to state a claim under the Unruh Civil Rights Act (Civ. Code § 51,
19 51.1, 51.2 and 51.3).

20 6. Plaintiff failed to state a false imprisonment claim.

21 7. Plaintiff has failed to state a claim under 42 U.S.C. § 1983.

22 8. Former Sheriff Harold Carter and current Sheriff Raymond Loera are entitled to
23 federal qualified immunity and various immunities under state law that preclude liability against
24 them.

25 This motion is based on this Notice of Motion and Motion, the accompanying
26 Memorandum of Points and Authorities, the County Defendants' Request For Judicial Notice, the
27 Declarations of Robert Cortez and Jessica Cisneros concurrently filed herewith, all pleadings and
28 papers on file in this action, and upon such other matters as may be presented to this Court at the

1 time of the hearing.

2 Dated: May 21, 2008

Liebert Cassidy Whitmore

3
4 By: 

Jesse J. Maddox

J. Scott Tiedemann

Judith S. Islas

Attorneys for Defendants

HAROLD CARTER, RAYMOND

LOERA, COUNTY OF IMPERIAL, AND

IMPERIAL COUNTY SHERIFF'S

DEPARTMENT

LIEBERT CASSIDY WHITMORE
A Professional Law Corporation
5701 N. West Avenue
Fresno, CA 93711